IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 23141 of 2003

Between:

Singareni Collieries Company Limited rep., by its General Manager (Personnel) Kothagudem, Khammam District.

..... PETITIONER

AND

1 The Assistant Labour Commissioner [central] Government of India, Ministry of Labour, Vijayawada, Krishna District
2 Sri S.R.Sonwalkar [Retired] Chief [T& E],1, Jaswand Rana Nagar Jalkna Road, Opp: Hotel Atithi Aurangabad-4341005

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Certiorari calling for the records from the first respondent relating to the orders dated 23.11.2002 in proceedings No.49/2002 and quash the same as illegal, arbitrary and one without jurisdiction.

Counsel for the Petitioner: MR. K.SRINIVASAMURTHY

Counsel for the Respondent No1.: MR.A.RAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondent No.2: None appeared

The Court made the following :

ORAL ORDER:

The petitioner-Singareni Collieries Company Limited has filed this writ petition to issue a writ of Certiorari calling for the records from the 1st respondent-Assistant Labour Commissioner (Central), Government of India, Ministry of Labour, Vijayawada relating to the order, dated 23.11.2002 passed in Application No.49 of 2002 with regard to the balance payment of gratuity to the 2nd respondent-retired employee. The said order is passed by the Controlling Authority under payment of Gratuity Act and Assistant Labour Commissioner (Central), Vijayawada.

The 2nd respondent in this writ petition is a retired employee, who filed an Application No.49 of 2002 for payment of gratuity amount of Rs.1,00,000/- payable to him under Payment of Gratuity Act, 1972. Pursuant to the said application, the 1st respondent directed the petitioner to pay a sum of Rs.1,00,000/- to the 2nd respondent. The 1st respondent, in his order dated 31.1.1999, directed the writ petitioner to pay the gratuity amount of Rs.2,50,000/- payable to the 2nd respondent which was withheld by the petitioner. Aggrieved by the same, the petitioner has preferred the Appeal No.2 of 1999. The Appellate Authority, under Endorsement No.36/2/99-E1, dated 8.8.2000 held that the action taken by the management against the

2nd respondent-retired employee in not paying the gratuity amount to him is illegal, unwarranted and unjustified as there is delay on the part of the petitioner and accordingly, dismissed the appeal by an order dated, 30.6.2000.

Questioning the said order, the petitioner filed W.P.No.10014 of 2002 and this Court, while admitting the said writ petition, passed an order, dated 29.10.2003 in W.P.M.P.26347 of 2003 in W.P.No.10014 of 2002 which is as follows:

> *"In view of the orders passed by the Controlling Authority/Assistant Labour Commissioner, Vijayawada, under P.G. Act, 1972 in case No.49/2002, the interim order passed by this Court on 10.6.2002 is modified to the following effect:*
>
> *"There shall be stay of payment of interest. However, the petitioner shall also deposit the amounts as directed by the authority in its order, dated 23.11.2002 in case No.49/2002. However, even to the extent of payment of interest if any in pursuance of the order dated 23.11.2002 shall stand stayed. The petitioner shall deposit the said amount within a period of one month from today.*
>
> *Post the writ petition for final hearing after Sankranthi Vacation".*

The petitioner, without complying with the said order, has filed W.P.No.23141 of 2003 questioning the order, dated 23.11.2002. The action of the petitioner in filing the second writ petition without complying with the order passed by this Court is unfair and without any justification. The petitioner obtained the said interim order, dated 29.10.2003 only after the impugned order dated 23.11.2002 made in the Application No.49 of 2002.

The petitioner, without complying with the orders of this Court dated 29.10.2003 cannot obtain the interim order, dated 4.11.2003 passed in W.P.M.P.No.29048 of 2003 in W.P.No.23141 of 2003, **w**hich reads as follows:

> *"There shall be an interim direction subject to the condition of the petitioner depositing half of the amount awarded by the authority below within a period of four weeks from today and on*

such deposit the respondent is at liberty to withdraw the same without furnishing any security".

Admittedly, as per the revised ceiling limit of the gratuity, the 2nd respondent is entitled to payment of total payment of gratuity of Rs.3,50,000/-/. Out of which, Rs.2,50,000/- was already paid to the him and therefore, the 2nd respondent is only entitled to the differential amount of gratuity of Rs.1,00,000/-.

It is stated that the Assistant Labour Commissioner (Central), in his order dated 23.11.2002, directed the petitioner to pay the 2nd respondent the balance amount of gratuity of Rs.1,00,000/-. There is no dispute that previously, the petitioner had no grievance at all with regard to the payment of Rs.1,00,000/- payable to the 2nd respondent and the petitioner never wanted to question the said order. Therefore, I am of the view that W.P.No.23141 of 2003 filed by the petitioner without complying with the earlier direction granted by this Court is unjustified. The said order passed by the 1st respondent with regard to the payment of gratuity of Rs.3,50,000/- after deducting Rs.2,50,000/- to the 2nd respondent which is a differential amount of gratuity of Rs.1,00,000/- was not at all questioned by the petitioner. The 1st respondent, after issuing the show cause notice, dated 30.4.2003, after making necessary enquiry and after giving reasonable opportunity, passed final orders and the impugned notice for the payment of gratuity is only a consequential order to the Application No.49 of 2002. The order passed in Application No.49 of 2002, dated 23.11.2002 is a final order and the management never questioned the said order. Therefore, it is not open for the petitioner to question the said order by way of filing this writ petition when the earlier order dated 31.1.1999 with regard to the payment of gratuity was upheld by the appellate authority in Appeal No.2 of 1999 by an order dated 30.6.2000 under Endorsement No.36/2/1999-E1, dated 8.8.2000 which is the subject matter of the W.P.No.10014 of 2000.

Having regard to the facts and circumstances of the case, I am of the opinion that this writ petition is not maintainable and it is accordingly dismissed. There shall be no order as to costs.

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(V. ESWARAIAH, J.)

26th October, 2004.

bcj

To

1 The Assistant Labour Commissioner [central] Government of India, Ministry of Labour, Vijayawada, Krishna District
2 Two C.D. copies